

ITEM NOS.32+69

COURT NO.13

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition for Special Leave to Appeal (C) No.7295/2025

[Arising out of impugned final judgment and order dated 30-01-2025
in WPTT No. 6/2023 passed by the High Court at Calcutta]

SAMSUNG INDIA ELECTRONICS PVT. LTD.

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

(IA No. 66499/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

SPECIAL LEAVE PETITION (CIVIL) Diary No.14920/2025

(IA No. 71727/2025 - APPLICATION FOR PERMISSION, IA No. 70848/2025
- EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No.
70846/2025 - PERMISSION TO FILE SPECIAL LEAVE PETITION)

Date : 24-03-2025 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :

Mr. Balbir Singh, Sr. Adv.
Ms. Shivali Shah, Sr. Adv.
Mr. Naman Tandon, AOR
Mr. Rupinder Sinhmar, Adv.
Mr. Karan Sachdev, Adv.

Mr. Arvind Datar, Sr. Adv.
Mr. Shyam Divan, Sr. Adv.
Mr. Kavin Gulati, Sr. Adv.
Mr. Rahul Dhanuka, Adv.
Mr. Aakash Bajaj, Adv.
Ms. Prerona Banerjee, Adv.
Mr. Rahul Dhanuka, Adv.
Mr. Aakash Bajaj, Adv.
Ms. Prerona Banerjee, Adv.
For M/s. Khaitan & Co., AOR

For Respondent(s) :

Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Kunal Mimani, AOR
Mr. Prashant Alai, Adv.
Ms. Afshaa Hakim, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. We heard Arvind P. Datar, Mr. Balbir Singh, Mr. Shyam Divan, and Mr. Kavin Gulati for the petitioners and Mr. Rakesh Dwivedi, the learned counsel appearing for the State of West Bengal.
2. As requested for by Mr. Arvind P. Datar, the petition being Diary No.15479/2025 although not on board today, yet is treated to be on today's board. The defects, if any, shall be cured by the petitioner.
3. Application seeking permission to file the Special Leave Petition is granted in Special Leave Petition (C) Diary No.14920/2025.
4. The subject-matter of challenge before the High Court was to the constitutional validity of the "West Bengal Taxes on Entry of Goods into the Local Areas" Act, 2012 as amended by the "West Bengal Finance Act 2017" and the rules made thereunder including the notifications issued thereunder.
5. The original petitioners prayed for a declaration that the State has no power to levy tax on entry of goods into the local areas under the Act of 2012 and the Rules made thereunder, meant for export to territories outside India.
6. The challenge failed before the High Court.
7. In such circumstances, the petitioners (original petitioners) are here before this Court with their respective petitions.
8. Mr. Dwivedi, the learned counsel appearing for the State of West Bengal submitted that the issue by and large is covered by a decision of this Court in the case of "*State of Telangana v. Tirumala Constructions*" (2023) 15 SCC 578 more particularly Para Nos.78, 89 and 99 to 102 respectively, including the 9-Judge bench decision in the case of "Jindal Stainless Ltd. and Anr. v. State of Haryana & Ors., (2017) 12 SCC 1".
9. In *Tirumala Constructions*(supra), the Court held thus:-

"78. Section 19 seeks to achieve three aims. The first is

to preserve the existing status quo with regard to the State and Central indirect tax regime, for a period of one year from the date of commencement of the Amendment or till a new law is enacted whichever is earlier. The second is authorising the competent legislatures i.e. the State Legislatures and Parliament to amend existing laws which were in force in States and other parts of the country (obviously both Central and State laws). The third was the repeal of such laws. Now, that Section 19 was meant to be transitional cannot be doubted. In its absence, the several hundreds of State enactments and central laws which were in force, would have been jeopardised. Other than Section 19 there is no saving provision which is part of the Amendment. It is questionable whether Section 6 of the General Clauses Act, 1897, would have applied on its own force. Consequently, Parliament, acting in a constituent capacity, amended the substantive parts of the Constitution, and also, at the same time ensured through Section 19 that limited operation of existing laws continued till the legal regime was changed in accordance with the amended parts of the Constitution. Keeping in mind that the Amendment, denuded the States – and even Parliament of legislative authority in regard to the pre-existing (i.e. pre-amendment) powers and fields of taxation, the absence of such a transitional provision might have been catastrophic. It was in this context that Section 19 also clarified that not only were the laws to be continued, in force but also that the States – and Parliament, could amend, or repeal them.

B. Whether the power of amendment or repeal is subject to limitations under Section 19.

89. In this context, Section 143(2) of the Government of India Act, 1935 was considered by a Constitution Bench of this Court in Ram Krishna Ram Nath [Ram Krishna Ram Nath v. Janpad Sabha, 1962 SCC OnLine SC 61 : 1962 Supp (3) SCR 70] . That provision reads as follows:

"143. (2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

99. There is no doubt that the authority to legislate

flows from the Constitution. In the context of our Constitution, this authority has been traditionally located primarily in Articles 245 and 246. The courts have consistently recognised that the Lists in the Seventh Schedule to the Constitution merely delineates the fields of legislation; they are not considered as sources of power. The authority or the power stems from Articles 245 and 246. The reorganisation of those legislative fields particularly Entry 84 of the First List and Entry 54 of the Second List and the conformant of larger powers, upon both the legislative entities i.e. Parliament and the State Legislatures meant that both authorities to legislate upon all subject-matters which are comprehended within the description of "goods and services" for the purpose of indirect taxation under Article 246-A. Yet the operationalisation of this provision required the formulation of the principles by the GST Council which occurred later. The hiatus between the coming into force of the constitutional amendment and the enactment of a comprehensive legislation (based upon the recommendations of the GST Council), provided for by Section 19. As held in the previous segment of this judgment Section 19 is to be construed as part of the Constitution for the limited duration it operated and was effective.

100. Such being the case the sequitur would have to be that the authority to legislate is expressed through Section 19, read with Article 246-A. In other words, in the absence of principles formulated by the GST Council, the authority so to say reserved by Section 19 and Article 246-A to amend or repeal the law the subject-matter as originally understood itself stood obliterated from the Constitution. This would have resulted in a conundrum. Therefore, Section 19 and Article 246-A are to be understood as expressing a field of legislation available to both Parliament and the State Legislatures to in furtherance of the status quo, cater to unforeseen or other eventualities in the administration of existing tax laws. An example can be that a heavy financial burden, being cast as a consequence of holding that the machinery for collection of an existing levy, was defective, the High Court invalidating a rule or statutory provision. In that event, were it to be held, that the State lacked competence altogether to legislate, and cure the defects through a validating enactment, during the period till 1-7-2017, the results could have been catastrophic. The phrase "amend" or "repeal" denotes a legislative activity. That it is spoken of in a provision, introduced through a constituent process, means that it has to be given meaning, because no words or provisions can be considered as surplusage.

101. The meaning of the term "amend" is well known : it

takes within its sweep the idea of correcting something, adding something, deleting, or substituting something or doing something to an existing document, enactment, or rule to make it better. P. Ramanatha Aiyar's Advance Law Lexicon [P. Ramanatha Iyer, Advance Law Lexicon, Vol. I at p. 271] , has this to say:

"Amendment/Repeal. Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. There is no real distinction between repeal and an amendment. Bhagat Ram Sharma v. Union of India [Bhagat Ram Sharma v. Union of India, 1988 Supp SCC 30 : 1988 SCC (L&S) 404].

Amend. A word derived from the French word signifying 'to make better'; 'to change for the better'.

To alter formally by some addition, omission or substitution [Preamble, T.P. Act (4 of 1882)].

The power to 'amend' Constitution conferred by Article 368 of the Constitution is wide enough to include the power to take away fundamental rights. (Shankari Prasad Singh Deo v. Union of India [Shankari Prasad Singh Deo v. Union of India, 1951 SCC 966 : AIR 1951 SC 458])

The dictionary meaning of the word 'amend' is to correct a fault or reform; but in the context of Article 368 reliance on the dictionary meaning of the word is singularly inappropriate, because what Article 368 authorises to be done is the amendment of the provisions of the Constitution. An amendment of a law may in a proper case include the deletion of any one or more of the provisions of the law and substitution in their place of new provisions. Similarly an amendment of the Constitution which is the subject-matter of the power conferred by Article 368, may include modification or change of the provisions or even an amendment which makes the said provisions inapplicable in certain cases. The power to amend in the context is a very wide power and it cannot be controlled by the literal dictionary meaning of the word 'amend'. Sajjan Singh v. State of Rajasthan [Sajjan Singh v. State of Rajasthan, 1964 SCC OnLine SC 25 : AIR 1965 SC 845] .

Amend; emend; Correct; Rectify; Reform. All these words convey the idea of making a things into a more perfect State. We correct when we conform things to some standard or rule; as to correct proof sheets. We amend by removing faults or errors as to amend a decree or a law. Emend is another form of amend and is mostly applied to editions of

books. To reform is to put into a new and better form, as to reform one's life. Rectify is to make right, as, to rectify a mistake, to rectify an abuse.

The amendment of a law may in a proper case include the deletion of any one or more of the provisions of the law and substitution in their place of new provisions. An amendment of the Constitution which is the subject-matter of the power conferred by Article 368, may include modifications or change of the provisions or even an amendment which makes the said provisions inapplicable in certain cases. *Sajjan Singh v. State of Rajasthan* [*Sajjan Singh v. State of Rajasthan*, 1964 SCC OnLine SC 25 : AIR 1965 SC 845] , AIR at p. 854. [Constitution of India, Article 368]

The term 'amended in Section 1(2) of the Calcutta Trika Tenancy Amendment Act must be construed in its natural meaning 'as altered by addition, substitutions and omissions'. *Deorajin Debi v. Satyadhan Ghosal* [*Deorajin Debi v. Satyadhan Ghosal*, 1953 SCC OnLine Cal 222 : AIR 1954 Cal 119] ."

102. It is, therefore, held that there were no limitations under Section 19 (read together with Article 246-A), of the Amendment. That provision constituted the expression of the sovereign legislative power, available to both Parliament and State Legislatures, to make necessary changes through amendment to the existing laws. As held in *Ram Krishna Ram Nath* [*Ram Krishna Ram Nath v. Janpad Sabha*, 1962 SCC OnLine SC 61 : 1962 Supp (3) SCR 70] the transitional power [in that case, Section 143(3)] "the provision by its implication confers a limited legislative power to desire or not to desire the continuance of the levy". This limited legislative power was not constricted or limited, in the manner alleged by the States it is circumscribed by the time-limit, indicated (i.e. one year, or till the new GST law was enacted). It could, therefore, enact provisions other than those bringing the existing provisions in conformity with the amended Constitution."

10. We are of the view that we must look into the issue involved in the matter.
11. Issue notice, returnable on 22-4-2025.
12. Mr. Kunal Mimani, the learned AOR waives service of notice for and on behalf of the State of West Bengal.
13. Hence, formal notice to the said respondent is dispensed with.
14. Let notices be issued to other respondents.

15. It is understood that the matter shall be heard finally on 22-4-2025.

16. No coercive steps shall be taken against the petitioners till 22-4-2025.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)